IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1503 OF 2006

Commander Ravindera Sadashio
Kshirsagar,
(01807-F), resident of A-25, Hyderabad
Estate, Nepeansea Road, Mumbai 400 036. ... Petitioners

Versus

1. Union of India (through Law &
   Judiciary Dept), Ayakar Bhavan,
   New Marine Lines, Mumbai.
2. The Chief of Naval Staff,
   having his office at Naval Headquarters,
   DHQ PQ, New Delhi 110 011.
3. The Chief of Personnel,
   having his office at Naval Headquarters,
   Sena Bhavan, New Delhi 110 011.
4. The Flat Officer Commanding
   in-Chief, Western Naval Command,
   having his office at Shahid Bhagat
   Singh Road, Mumbai 400 023.
5. Integrated Headquarters of the
   Ministry of Defence (Navy), having
   its office at Naval Headquarters,
   Sena Bhavan, New Delhi 110 011. .. Respondents

Mr. Shyam Mehta with Mr. Satendra Kumar for Petitioner.

Mr.Vikas Singh, Addl. Solicitor General along with Mr. Rajiv Chavan and Ms. Akhila Kaushik i/by Pankaj Kapoor for Respondents.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 19th October, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.) :

Rule.

As the matter involves career of senior Officers in the Indian Navy, the parties agreed that it would be appropriate if the Petition is disposed of at the admission stage itself. The matter accordingly was heard on various dates. The parties were also directed to file their written submissions considering the time constraint. The Petitioners have submitted their written arguments only on 21.9.2007.

2. The Petitioner is at present working as Commander (Time Scale). Till the notification of the Government of India dated 11.3.2005, the Petitioner ordinarily would have superannuated as Commander (Time Scale). The Government of India had appointed a committee which is known as “Ajay Vikram Singh Committee (AVS Committee). The committee was constituted by the Ministry of defence, to examine the Army headquarters proposals for reconstructing their officer cadre. One of the recommendations made was time based promotions in the officers rank. It was also recommended that the rank of Col. (Time Scale) be granted to all Lt. Cols on completion of 26 years service. The Committee noted in Para 76 of its report that whilst this report is primarily focused on the restructuring of the Officers' Cadre of the Army, it is applicable in nearly equal measure to the other two services. The Navy and Air Force however, should work out their Service specific requirements including the additional vacancies, which will be required at various ranks on operational/functional grounds. The variations that may be necessary to meet Service specific requirements would be perused by the individual Service Hqs separately.

3. Subsequent to the report, the Government accorded approval for implementation of the report of the AVS Committee, one of which was promotion of Lt. Colonel's who had completed 26 years service to the rank of Colonel (T.S.). On 12.3.2005. The Government then

accorded approval for implementation of the AVS Committee report to the Indian Air Force. One of the recommendations was promotion of Wing Commander to Group Captain (Time Scale) on completion of 26 years of service subject to other requirements.

On 11.3.2005, the President was pleased to convey sanction for revision of various terms and conditions of service for Naval Officers, except Medical and Dental Officers. Some of the relevant paragraphs are as under :

"1. Consequent to the acceptance of recommendations of the AV Singh Committee Report (Part,1), I am directed to convey the sanction of the President for revision of various terms and conditions of service for Naval Officers, except Medical and Dental Officers, as given in the succeeding paragraphs.

2. Substantive Promotion : To reduce the age profile and supersession levels in the Navy, as also to improve vertical mobility, promotion to substantive ranks will be made based on eligibility criteria indicated below.

RANK	**Eligibility Criteria**
(a) Sub Lieutenant	On commissioning
(b) Lieutenant	02 years as Sbt.
© Lieutenant	04 years from date of promotions to Substantive Lt.
(d) Commander	11 years from date of

(e)	Captain (Time Scale)	promotion to Substantive Lt. 26 years of reckonable commissioned service.

3. The aforementioned promotions will be governed by the following :

(a) Inter-se seniority amongst officers as per Navy List will be protected.

(b) Forfeiture/gain of time as specified in Chapters IV and VI of Regs Navy Part III.

© Provisions w.r.t. Discipline, vigilance and medical as promulgated by IHQ Mod (N) from time to time.

4. Promotions accruing from Para 2 above shall also be subject to officers fulfilling other criteria, to be notified by the IHQ Mod (N) through policy letters on the subject. Seniority of officers eligible for promotion based on above mentioned criteria, who have not completed mandatory sea time due to service constraints, will be protected.

5. Those serving in the rank of Commander (Time Scale) will now be eligible for grant of substantive rank of Commander. The existing rank of Commander (Selection) shall remain applicable till the existing Commanders (Selection) are either promoted to the rank of Captain (Selection) or Captain (Time Scale) or are retired. No further promotions to Commander (Selection) shall be made.

Captain (Time Scale)

6. Officers not promoted to the rank of Captain by selection may be granted substantive rank of Captain (Time Scale), irrespective of vacancies, provided they are considered fit in all respects. The terms and conditions governing the rank of Captain (Time Scale) to these officers are as under :

(a) Pay scale : As applicable to Captain Selection Grade which currently is Rs.15,100-450-17,350.

(b) Rank Pay Officers will be entitled to rank pay of a Commander which currently is Rsw.1,600/- p.m.

© Other Allowances & Perks : Officers holding the rank of Captain (Time Scale) will be eligible for all allowances and other perks as applicable to Captain Selection Grade.

(d) Age of Superannuation : All officers holding the rank of Captain (Time Scale) shall retire on superannuation on attainment of the age of 54 years.

(e) Medical Criteria : Criteria applicable for the rank of Cdr.(TS) will now be applicable to the new grade of Capt (TS).

7. Officers holding the rank of Captain (Time Scale) will be held against the sanctioned strength of Commanders. Such officers shall in precedence, rank junior to the following officers :

(a) Substantive Captain by Selection
(b) Acting Captain by Selection

8. Detailed criteria and procedure for grant of substantive rank of Captain (Time Scale) will be notified by integrated Headquarters of Ministry of Defence (Navy)."

4. Subsequent to the sanction by the President, Integrated Headquarters, Ministry of Defence (Navy) New Delhi issued a policy on 14.3.2005 for implementation of Part I – AVS Committee Recommendations (AVSCR). Some of the relevant paras read as under ;

"3. Governing Principle : The fundamental tenet for implementation is that the inter-se seniority among Officers as per Navy List, will be protected. The aim of succeeding paragraphs is to lay down the modalities for implementation' of the above, with minimum impact on command and control structures and traditional naval ethos."

"10. All Lt. Cdrs who have completed 11 years from date of promotion to substantive Lt would be eligible for promotion to Substantive Cdr. In the first instance, the following officers would also become eligible :-

(a) All Ag. Cdrs (Select List)
(b) All Cdrs (Time Scale)
© All "R"/"N" Graded Lt. Cdrs."

Paras 19, 20 and 22 read as under:

"19. The IHQ Mod (N) will screen and promote substantive Cdrs who have completed 26 years of

reckonable commissioned service to the rank of Capt. (TS). All Capts (TS) will continue to be borne against the sanctioned strength of Cdrs and below and will hold appointments tenable by Cdrs. These officers will not be constituted as Cmde subsequently.

20.To maintain existing inter-se seniority, Cdrs (Time Scale) and Lt. Cdrs. who have been finally superseded will be eligible for promotion to Capt (Time Scale) only after all erstwhile Ag. Cdrs (Select List) have been promoted to Capt (Select List) / Capt (Time Scale)/ retired. Para 3 of GOI Letter ibid also refers."

"22. Such Officers shall, in precedence, rank junior to the following officers :

(a) Substantive Captain by selection;

(b) Acting Captain by Selection."

5. The Integrated Headquarter of Ministry of Defence (Navy) New Delhi issued another communication dated 2nd November, 2005. The following paras of the communication are relevant :

"2. The AVSC recommendations, besides improving the promotion prospects of officers, are aimed at ensuring a younger age, profile of officer in the three Services. Whilst embracing the fundamental tenets of the AVRC recommendations, the underlying thrust of the IN promotion policy for non select ranks,

has been to preserve inter-se seniority amongst officers as per Navy List, thereby ensuring minimal turbulence to the existing Command and Control structure.

4. The above implies that immediate grant of promotion to Cdrs (TS) with 26 years of commissioned service, to the rank of Captain(TS), is untenable since it would impact on the sanctity of inter-se seniority. While, this may be considered at variance with the Army/Air Force implementations, it is relevant to highlight that the implementation by the two Services has been based on mitigating circumstances such as their geographical dispersion and selective placement. The IN policy is practical and based on time tested, functional and traditional norms followed even pre-AVSC.

5. It is further clarified that the new regulations do not preclude promotion of erstwhile R1/R2 graded Lt. Cdrs (subsequently not placed on Select List for promotion to Captain) or erstwhile Cdrs (Time Scale) and Lt. Cdrs ((N Graded) (finally superseded) to the rank of Capt (TS) but only appropriately defers it till such time the provisions at para 3(a) are complied."

6. Several Commanders (Time scale) who were aggrieved by these Communications made representations to the Ministry of Defence. The representations were rejected and they were so informed.

6. It is the Petitioners case that inspite of the notification of 11.3.2005 consequent to the subsequent notifications, the

Petitioner though eligible and having completed 26 years of service to be considered for promotion to the rank of Captain (Time Scale), cannot be considered, till such time as all commanders (select) and Commanders (Acting) are promoted as either Captain (TS) or Commander (Select). The Petitioner in the course of such exercise, would retire.

7. It is submitted on behalf of the Petitioner that the terms and conditions of service governed by the Government of India letter dated 11.3.2005 are to be effective from 16.12.2004. The notification by the Integrated Headquarters, Ministry of Defence (Navy) on 14.3.2005 and 2.11.2005 has the effect of altering the rights for consideration for promotion, as contained by Government of India letter dated 11.3.2005. The impugned policy letters in effect alter the terms and conditions of the services of the Petitioner, which are prescribed by the Government of India and as such are without authority of law. It is also submitted that the Paragraph 3 of the Communication of 11.3.2005 cannot have the effect of deferring the promotion of Commander (TS) like the Petitioners who has completed 26 years of service. What the para at all would mean is that in the rank as and when Commander (Select) and acting Commanders are promoted to Captain (TS), they will be senior to Commanders (Time Scale) who were promoted as Captain (Time Scale) before them. More over inter-se seniority obviously means seniority in the same rank and not in different ranks.

It is next submitted that the Army and the Air Force have both implemented the AVS Committee

recommendation by immediately promoting all eligible officers in the rank of Lt. Col (Time Scale) to Col. (Time Scale) and Wing Commander (Time Scale) to Group Captain (Time Scale). In these circumstances, it is absurd for the Navy to contend that the Govt. Notification permits them to do the opposite. If the impugned naval policy is implemented then no Commander (Time Scale) can be considered for promotion to the rank of Captain (Time Scale) till January, 2016, since the last Commander (Select)/acting Commander (Select) would be eligible for consideration by the end of the year 2015. According to Petitioners, all Commanders (Time Scale) would by then have retired and none would be available to get the benefit of promotion of Captain (Time Scale).

It is also submitted that the Navy does not have the power to vary a Policy of the Government of India. It is only the Govt. of India that can vary its own Policy. Consequently, the impugned Naval Policy as reflected in these communications, are clearly ultra vires and in any event cannot alter or modify the Govt. Policy much less take away the right to be considered for promotion, conferred by the Govt. Policy.

It is therefore, submitted that the impugned communications are ultra vires and violative of Article 14 of the Constitution of India, to the extent that they have the effect of postponing the promotion of the petitioner to the rank of Captain (Time Scale) untill all Commanders (Select) and acting Commanders (Select) are promoted to the rank of Captain (Time Scale). The two communications

are therefore, liable to be quashed and set aside with a direction to the respondents to promote Petitioners as Captain (TS) with effect from 16.12.2004.

8. Affidavit in reply has been filed on behalf of the Respondents, by Commander R.N. Purandare. It is set out that the Petitioner has not exhausted the efficacious remedy available for redressal of his grievance under the provisions of Navy Act, 1957 and the regulations framed thereunder and has instead chosen to approach the Hon'ble Court directly, which is procedurally incorrect. In our opinion at the outset it may be noted that the representations made by similarly situated officers have been rejected. The contentions urged in this Petition also cannot be considered or decided by the Authorities. That objection is therefore, devoid of merits. The letters dated 14.3.2005 and 24.11.2005 of the Integrated Headquarter Ministry of Defence (Navy) it is explained are simply an elaboration and amplification of Govt. of India letter dated 11th March, 2005 and in no way at any stage contravene the provisions of the GOI letter dated 11th March, 2005. The Government of India Letter dated 11.3.2005, Para 3, clearly sets out that the promotions will be governed by the inter se seniority of the Officers as per naval list which will be protected.

It is also contended that as per Para 8 of the Government of India Letter, the Government has authorised Integrated Headquarters/Ministry of Defence to set out the detailed criteria for grant of substantive rank of Captain (Time Scale). As such, the policy letters dated 14th March, 2005 and 21 November, 2005 have been issued by Respondent No. 5

under the authority of the Govt. of India. The policy letters/draft guidelines submitted are as per existing regulations and taking into consideration all service exigencies and effect of implementation of the said policy on the morale of the service. It is submitted that in the Indian Navy, if the Commander (T.S.) including Petitioner is promoted to the rank of Captain (T.S.), immediately. as claimed by the Petitioner, he will supersede almost 1300 Commanders in one stroke, who are senior to him in the naval list. This will not only affect the morale but also be contrary to the existing regulations. This is neither practical nor desirable and in fact will be contrary to the regulations/policies.

Dealing with the contention of the other two services, it is contended that they have so done according to their needs/requirements and their service conditions. In the armed forces, the promotional policies are framed to suit the service requirements which in turn are linked to the peculiarities of different rank structure and dictates of command and control. In the Indian Navy, if the Commanders (TS) including the Petitioner are promoted to the rank of Captain (Time Scale) immediately as claimed by the Petitioner, he will supersede almost 1300 Commanders (Select List) who are senior to them in a single stroke. Though It is true that the Army and Air force have promoted Lieutenant Colonel (Time Scale) to Colonel (Time Scale) and Wing Commander (Time Scale) to Group Captain (Time Scale) respectively, the terms and conditions of Indian Navy are different from Army and Air Force. Navy's approach in this regard has been practical and in conformity with the extant

regulations as it does not disturb the existing seniority structure as promulgated in the Navy List. It is set out that it is not as if Commander (TS) have been denied promotions to the rank of Captain (TS). It has only been deferred. Consequent to the order of this Court dated 23.11.2006 certain additional information was furnished. It has been pointed out that as on the date of the notification dated 11.3.2005, made effective from 16.12.2004, the number of Commanders (Select) were 1119 (One thousand one hundred and nineteen). Acting Commanders (Select list) were 358 and Commanders (Time Scale) were 412. As of 25.11.2006, 88 Commanders (Select) have been promoted to the rank of Captain (Select) and 208 Commanders (Select) granted the rank of Captain (Time Scale). No Commander (Time Scale) has so far been granted/appointed as Captain (Time Scale). It is also pointed out that all Commanders (Select) selected by Promotion Board 03/2004 would be eligible for promotion to Captain (Time Scale) by 2015. Although 282 erstwhile Commanders (Time Scale) including the Petitioner would have retired by then and not be benefited, yet 420 Officers (130 erstwhile commanders (Time Scale) and 290 “N” graded Lieutenant Commanders (Lieutenant Commander who have now been select listed for Commander) would continue to be eligible for promotion.

9. An additional affidavit was filed on 27.02.2007 by Commandare Purandare. Amongst other contentions, it was brought on record, that several representations made by individual Officers (Commanders) (TS), has been disposed of by the Government of India, Ministry of Defence and it is set out that in terms of the Communication of 8.3.1996 the Jt.

Secretary is competent to decide all the representations.

As it was contended that by the order dated 11.3.2006, the Ministry of Defence had issued policy decision in the matter of providing promotional avenues and that policy could have been amended by Jt. Secretary, Navy and that in fact it has been so done based on the power conferred by order dated 8.3.1996, we had pointed out that the communication dated 8.3.1996 only confers power to decide statutory complaints. An affidavit has now been filed by by Captain Purandare which clearly sets out that the order dated 8.3.1996 only deals with the delegation of powers to the Joint Secretary regarding disposal of statutory complaints of officers upto the rank of Brigadier and equivalent and that the communication of the Integrated Headquarters (Navy) dated 14.3.2005 impugned in the writ petition was to harmonize the two clauses of the instruction dated 11.3.2005 relating to eligibility of offices to promotion as Captain time scale vis a viz to maintain interse seniority amongst as per Navy list. The impugned decision dated 14.3.2005 was under the instruction dated 11.3.2005 itself.

10. We may only add an additional fact. The Petitioner in his affidavit has set out, that he denies that Commander Purandare was authorised to affirm the affidavit on behalf of the respondents at any rate, on behalf of the Union of India. This averment has not been dealt with by the respondents in their subsequent affidavits. It is also pointed out that the statement on behalf of the respondents that 218 erstwhile Commanders of time scale would have retired by 2015 is incorrect as about 405

Commanders will be retiring by that time.

11. Considering these contentions the issues that will arise for consideration are :

(1) Whether the communications of 14.3.2005 and 2.11.2005 are without the authority of law and in contravention of the notification dated 11.3.2005.

(2) Whether the communications dated 14.3.2005 and 2.11.2005 can be said to be arbitrary, violative of Article 14 of the Constitution of India in as much as the effect of these communications amount to denial to the Petitioners of promotional opportunities to the rank of Captain (Time Scale), even though eligible under notification of 11.3.2005.

(3) Would the action of Respondent No. 2 to 5 be said to be arbitrary in as much as the corresponding ranks in the Indian Army and Air Force have been granted promotion from 16.12.2004.

12. To understand the contentions, we may firstly note the promotion policy in the Navy previous to communication on 11.3.2005. The promotion to the rank of Lieutenant was after putting in maximum three years of service, minus the seniority gained during Sub courses. Promotion to the rank of Lt. Commander is after completion of 9 years of service. Promotion to the rank of Commander was by selection, based on performance/merit after

completion of 14 to 14.1/2 years of service. Three chances were afforded by the Selection Board for promotion to the rank of Commander. The promotion to the rank of Commander (TS) (i.e. When officer not selected in three chances), is after completion of 20 years of service. Commander (TS) was not eligible for consideration for promotion to the rank of Captain.

Pursuant to the policy of 11.3.2005 and communications dated 14.3.2005 and 24.11.2005, promotion to the rank of Lieutenant is on completion of two years of service. Promotion to the rank of Lt. Commander is after completion of six years of service. Promotion to the rank of Cdr. is after completion of 13 years of service. Promotion by selection to the rank of Captain by virtue of merit/performance is after completion of 18 years of service, three chances are afforded by the Selection Board for the promotion to the rank of Captain (Select Grade). If a Commander does not get selected within the three chances, then after completion of 26 years of service, he is entitled to be considered as Captain (Time Scale).

13. We may now deal with the first contention. Are the communications of 14.3.2005 and 2.11.2005 in contravention of the notification of 11.3.2005. It is not disputed and cannot be disputed that once the President has sanctioned the condition of service which includes promotion to the post of Captain (Time Scale), it would not be open to the Respondent Nos. 2 to 5 to alter, modify the Policy, unless power was conferred to modify the same. In Shankar Pandurang Jadhav and Ors. Vs. Vice-

Admiral, Flat Officer, Commanding-in-Chief and Others, (1991) 2 S.C.C. 209, the Supreme Court has been pleased to hold that a subsequent order issued by the Navy, inconsistent with the Presidential Order, has to be ignored as officers in the Naval Department were not competent to alter, vary or modify a Presidential order.

The question that we are called upon to answer is whether there was any power in Respondent Nos. 2 to 5 to issue communication of 14.3.2005 and 2.11.2005 as contended by them considering the language of the Notification dated 11.3.2005. Para 3 which we have reproduced earlier sets out that the promotion is to be governed amongst others by maintaining the interse seniority as per naval list which will require to be protected. According to Respondents this paragraph read with Para 8 of the notification which sets out the detailed criteria and procedure for grant of substantive rank of Captain (Time Scale) is to be notified by the Integrated Headquarters of the Ministry of Defence (Navy). It is in exercise of this, that the communications of 14.3.2005 and 2.11.2005 respectively were issued. What would be the meaning of the expression “interse seniority” of Officers as per naval list which has to be protected. Seniority in the rank of captain is covered by the Para 7 which places the order of seniority as under:

(1)Substantive Captain by selection ;
(2)Acting Captain by Selection.
(3)Captain (Time Scale).

In other words Captain (Time Scale) in the rank of Captain, will always be junior to those who have been promoted as substantive captain by selection or as Acting Captain by

selection. If the seniority in the rank of Captain is already provided, then Para 3 will have to be given a distinctive meaning and if it has to be given distinctive meaning, then Par 8 will have to be considered. The feeder rank for appointment to the rank of Captain (Select) or Captain (Time Scale) is in the rank of Commander. In the rank of Commander (Time Scale) are those Lt. Commanders, who could not be selected as Commander on merit. Appointment to the promotional rank of Commander (Time Scale) was on completion of 20 years of service and thereafter there was no further avenue of promotion. From the affidavit of Commander Purandare as on the date of notification of 11.3.2005 there were 1300 Commanders (Select List) who were senior to the Commanders (Time Scale). Commander (Select List) was by selection and Commander (Time Scale) on completion of 20 years of service subject to other requirements. If the Notification of 11.3.2005 has to be read as Petitioner want us to read, it would mean that all Commanders (Time Scale) though in the naval list were junior to commanders (Select) or Acting Commanders (Select) on account of the new policy by putting in the 26 years of required service have to be considered for promotion to the post Captain (Time Scale). In terms of Para 7 of the Communication dated 11.3.2005, on promotion they would be senior to Commander (Select) and Commander (Acting). According to the Navy, if this is so applied, it would affect the command and control structure in the Indian Navy. Would this amount to protecting the inter se seniority in the naval list. On the contrary, Commaner (Time Scale) who were junior and earlier not eligible for promotion to the post of Captain, by virtue of the notification dated 11.03.2005 would have to

be considered for promotion to the post of Captain (Time Scale). This would affect the inter se seniority amongst Commanders in the Naval List. From the various affidavits filed on behalf of the Respondent Nos. 2 to 5 and the submissions made, the policy of deferment of promotion to those holding post of Commander (Time Scale) is that otherwise, meritorious candidates who had been selected to the post of Commander will rank junior to the Commander (T.S.) until they are promoted as Captain. The only question is whether the notification of 11.3.2005 so permits. Para 6 of the notification of 11.3.2005 sets out that the Officers not promoted to the rank of Captain by selection may be granted substantive rank of Captain (Time Scale), irrespective of vacancies, provided they are considered fit in all respects. Therefore, such officers if fit can be granted substantive rank of captain (time scale). The expression used is not “shall” but “may” . The expression “may” can be read in the context it is used. It can also be read in the context of Para 3, which would mean maintaining interse seniority amongst the officers as per naval list which had to be protected. In Para 4, it was made clear that the promotions accruing from Para 2 above shall also be subject to officers fulfilling other criteria, to be notified by the IHQ Mod (N) through policy letters on the subject. On a co-joint reading of Para 3, Para 4, Para 6 and Para 8 and on a harmonious construction, it cannot be said that the communications of 14.3.2005 and 2.11.2005 are ultra vires the the communication of 11.3.2005. In our opinion, the interse seniority amongst the Officers as per naval list in the rank of Commander will have to be protected and the two communications will have to be read in consonance with these requirements. The AVS committee in

its report had left it to the Navy to work out the service specific requirements. From 16.12.2004 all Commander (T.S.) will be holding the substantive rank of Commander. We are therefore, clearly of the opinion that the two communications issued by the IHQ Mod (N) are not in contravention of the Government circular/communication of 11.3.2005. These communications are pursuant to the power which flows from the Notification of 11.02.2005, itself. That contention therefore, will have to be rejected.

14. The next contention is whether the communication of 14.3.2005 and 2.11.2005 have resulted in denial to the Commanders (Time scale), their chance of promotion and thereby are violative of Article 14 of the Constitution of India. The argument is that though the policy of 11.3.2005 confers right to be considered for selection to the post of Captain (Time scale), the subsequent communications of 15.3.2005 and 2.11.2005 which delays promotion would result in denying to the Petitioner and similarly placed Commanders (Time Scale), the right to be considered for promotion to the post of Captain (Time Scale), as the Petitioner like most other commanders, will retire before they can be considered for promotion to the rank of Captain (T.S.). The present petition has not been filed in the representative capacity nor is it espousing the cause of all persons similarly situated like the Petitioner. However, if the Petitioner succeeds, that would result in applying the ratio of the judgment to all others similarly situated Commanders (T.S.). The policy of 11.3.2005 has resulted in the creation of the post of Captain (Time Scale) to be considered amongst others

from Commanders who have completed 26 years of service. If the figures cited and on record are considered, there appears to be no possibility of the Petitioner being considered during his service tenure. According to Respondents themselves, considering the policy, which defers consideration of Commanders (Time Scale), for promotion to the post of Captain (Time Scale), the youngest Commander (Select) would become due for promotion to Captain (Time Scale) in 2015 if not promoted Captain (Select). By then, about 282 erstwhile Commanders including petitioner would have retired and not be benefited. However, 220 Officers (130 erstwhile Commanders (Time Scale) and 290 N graded Lieutenant Commanders who have been listed as Commander would be eligible for promotion to the post of Captain (Time Scale). In other words, according to respondents, deferment is not illusory. According to the Petitioner the statement that only 282 erstwhile Commanders (time scale) would have retired by 2015 is not correct and that the correct position is that about 405 Commanders (Time Scale) would have retired. It is then merely denied that 130 erstwhile Commanders (Time Scale) or 290 N graded Lt. Commanders will continue to be eligible for promotion. An additional affidavit was filed by Commander Kshirsagar on 28.11.2006 subsequent to the order of this court dated 23.11.2006. It is set out that there were only 295 Commanders (Time Scale) existing as on 11.3.2005.Reliance is placed on the communication dated 17.3.2005. This letter sets out 295 Officers who have acquired substantive rank of Commander. There is another list of 17.3.2005 including 38 other Officers. It is pointed

out that out of 295 Commanders existing on 2.11.2005, about 13 have since retired and as on date, there are only 282 Commanders (Time Scale) existing out of the original 295 and that all these 282 erstwhile Commanders (Time Scale) would have retired by the time they would be eligible for promotion to the post of Captain (Time Scale). In so far as 290 N grade Lt. Commanders, they are junior to the erstwhile Commanders (Time Scale) including the Petitioners and may become eligible for promotion to the rank of Captain (Time Scale) as they might still be in service after 2015-2016. It is therefore, set out that 295 Commanders (Time Scale) would superannuate before 2015-16 and would not be benefited by the naval policy. From the figures brought on record, we proceed on the footing that none of the Commanders (Time Scale) would be eligible for consideration to the post of Captain (Time Scale). The fact therefore would be that considering the Government Notification of 11.3.2005 and the Communication dated 14.3.2005 and 2.11.2005 existing Commanders (Time scale) would be ineligible for consideration as they would have superannuated and it is only N graded Lt. Commanders who by virtue of the policy of 11.3.2005 have become Commanders Substantive by the same policy, will be eligible for consideration for promotion to the post of Captain (Time Scale). It is true that accepting the figures on record, no Commander (T.S.) will be eligible for consideration till 2015 by which time all of them would have retired. As however, pointed out at the same time, the policy requires the seniority in the Naval list tobe protected. Article 14 abhors arbitrariness. Is the action of the Respondents arbitrary

and or can it be said to be reasonable considering the exigencies of the service. The rank structure in the Navy determines the command and control structure. In the rank of Commanders, the Naval list provided that Commander (Select) and Acting Commanders would rank senior to Commanders (Time Scale) even if Commander (Time Scale) has put in more years of service as Commander (T.S.). If on account of the change of policy they are to be promoted, they will rank senior to all these other Commanders who in the cadre of Commanders were senior to them based on merits. The subsequent communications only protect this inter se seniority in the Naval List. As the Respondents have pointed out the subsequent communication was to protect the control and command structure and the morale, considering para 3 of the Government Policy. In our opinion, the subsequent communications are reasonable and in tune with the policy of 11.03.2005. Once we have accepted that contention, the challenge on the ground of Article 14 will have to be rejected;

15. That brings us to the last contention as to whether on the two other services having granted promotion to corresponding ranks, can it be said that the action of the Navy in not considering the case of the Commanders (Time Scale) for promotion to Captain (Time Scale) can be said to be arbitrary and violative of Article 14 of the Constitution of India. We have earlier referred to the various affidavits and that it is an admitted position that the other two services have granted promotions. Can that by itself be a reason to hold that the communication of 14.3.2005 and 2.11.2005 are

arbitrary. Firstly they belong to two different services, in other words, two different classes. It is not a case of posts within the same cadre, where one group of Officers are being considered to the exclusion of the other. Secondly, the respondents have set out the reasons as to why they have deferred the consideration for promotion of Commanders (Time Scale) immediately. The policy decision of an authority normally would not be interfered with as the Employer is the best person to evaluate his requirements and judge his problems. This court only interferes if the policy is either ultra vires or violative of the constitutional mandate. Judicial review does not concern itself with merits of the Act or action of the manner in which it is done. It also cannot be said that the action of the respondent is arbitrary or violative of Article 14, in as much as reasons have been stated as to why it was not possible for them to follow the principles followed by two other services. Once the policy confers powers on the respondents and the respondents considering the over all policy have laid down a criteria which is within the constitutional frame work, it will not be possible for this court to interfere on the ground of arbitrariness as admittedly the two other services have their own chain of command and control different from the chain of command and control in the Indian Navy. In our opinion, this challenge also is not sustainable.

16. Considering the above, there is no merit in the Petition as filed. Rule discharged. There shall be no order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO,J.)**